RECEIVED

JUL 9 2001

FCC MAIL ROOM

**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | : | |
| | : | CC Docket No. 96-45 |
| Federal-state Joint Board on | : | |
| Universal Service | : | CC Docket No. 98-171 |
| | : | |
| 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan Local Number Portability, and Universal Service Support Mechanisms | : | |
| | : | |
| Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990 | : | CC Docket No. 90-571 |
| | : | |
| Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size | : | CC Docket No. 92-237 / NSD File No. L-00-72 |
| | : | |
| Number Resource Optimization | : | CC Docket No. 99-200 |
| | : | |
| Telephone Number Portability | : | CC Docket No. 95-116 |

## REPLY COMMENTS OF TELSTAR INTERNATIONAL, INC.

Telstar International, Inc., ("Telstar") by its undersigned attorney, hereby submits its Reply Comments in the above proceeding.[1] Telstar agrees with the overwhelming majority of the Commenting Parties that the existing method of assessing carrier contributions to the universal service fund must be reformed to ease the enormous administrative burdens and unreasonable discrimination that the existing system levies on

[1] *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking in CC Docket No. 96-45, et. al. (rel. May 8, 2001).

reporting carriers. [2] As discussed in its initial Comments, the most administratively efficient, non-discriminatory and competitively neutral mechanism for assessing contribution to the Universal Service Funding Mechanisms ("USF") is a per line, or flat fee based assessment. Telstar will not repeat each of the arguments made in its initial Comments, but instead will use this opportunity to reply to the submissions of other Parties below.[3]

## I. THE COMMISSION SHOULD IMPLEMENT A FLAT FEE MECHANISM TO ASSESS UNIVERSAL SERVICE CONTRIBUTIONS.

Telstar vigorously supports a move to a flat-fee assessment mechanism as proposed by the Commission and supported by many of the Parties in this proceeding (See Comments of Sprint, AT&T, WorldCom, Z-Tel and Nextel). Moving to a flat-fee assessment mechanism would fix many of the problems inherent in the existing assessment method. Specifically, a move to a flat-fee mechanism will:

1. Remedy the severe discrimination against carriers in competitive markets;
2. Eliminate customer confusion and frustration over differing fees charged by different carriers;
3. Be relatively easy to implement;
4. Comply with the statutory requirements of the Act, and
5. Eliminate the huge administrative burdens currently imposed on reporting carriers by the existing contribution regime.

---

[2] See Telstar International, Inc. Comments, p. 1.

[3] While Telstar will not repeat all of the arguments made in its initial Comments, it continues to support each of those arguments and its failure to repeat them should not be construed as a waiver of those positions.

### A. Implementing a Flat-Fee Mechanism Will Remedy Much of the Severe Discrimination Inherent in the Existing Contribution Method.

The Commission should use a flat-fee approach to assess USF contributions. Unlike the existing approach, a flat-fee assessment method is nondiscriminatory and competitively neutral. As Telstar discussed in its initial Comments, the Commission should abandon the existing contribution method because it unfairly discriminates against both those carriers who operate in the most competitive market segments and their customers.[4] Specifically, because the current assessment is based on gross revenues and provides no adjustment for payouts to other carriers, providers in highly competitive market segments where margins are thin are affected much more profoundly than providers of less competitive high margin services. Companies who offer alternative access services (such as "dial around" and prepaid calling card services) feel this discrimination most acutely because price is the most important factor in their customers' decision-making process. As a result, margins for alternative access services are razor thin and providers of these services have little "wiggle room" to simply absorb the universal service fees or to include them as embedded subsidies in their rates.

As CDD, *et al.* notes, alternative access and prepaid card services are attractive to minority and poor customers who do not have local telephone service and are not presubscribed to an interexchange carrier[5] – the same customers the universal service fund is geared towards protecting. The existing method however, makes access to the network for these customers even more elusive by creating perverse disincentives against offering low cost services to these groups. Consider that in the international toll market,

---

[4] Telstar Comments, pp. 6-7
[5] See Comments of CDD et al., p. 5.

carriers who provide service to Latin America often reap gross profit margins (gross end user revenues minus payouts to other carriers) of no more than 3-5%.[6] Given the existing contribution rate of 6.78%, a company who is successful offering these services will actually *lose money*, as a result of universal service charges imposed. Couple this with the fact that the existing regime includes total interstate and intrastate revenue in the contribution base, and it is clear to see how the existing mechanism creates perverse incentives to cease offering these services on a competitive level.

The flat-fee assessment method would do much to ameliorate the discriminatory situation discussed above. As WorldCom notes in its Comments, a flat-fee assessment mechanism, "provides a neutral allocation of contribution obligations among all carriers involved in the provision of interstate services..."[7] and "is competitively neutral, avoiding distinctions (and hence market distortions) based on technology or categories of providers."[8] Similarly, the CECA report found that a flat-fee assessment is competitively neutral because all beneficiaries of the public switched network would contribute, regardless of means or technology.[9]

### B. Assessing Contributions on a Per Line Basis Would Eliminate Customer Confusion and Frustration over Universal Service Fees.

The Comments of several advocacy groups echoed the Commission's concerns regarding the extent to which the universal service line item fee varies from one carrier to the next.[10] These parties have advocated that the Commission either tie a carrier's

[6] This gross profit margin does not even account for administrative costs, uncollectibles or overheads.
[7] WorldCom Comments, p. 4
[8] *Id.*
[9] CECA report, p. 26
[10] NPRM, pp. 4-5, para. 5

universal service recovery to the contribution factor or force carriers to recover universal service charges through an implicit subsidy in their rates. The Commission cannot and should not do either so long as contributions to the fund are based on gross end user revenues. Even if the Commission were to provide a "discount" for uncollectibles, other variables would continue to make it necessary for different carriers to assess different contribution amounts on their end user bills in order to recoup USF assessments. These additional variables include, 1) payouts to carriers, 2) overheads, and 3) billing and collection costs to name a few. These additional factors cannot callously be discarded as internal inefficiencies that should not be rewarded by the Commission-- such a facile conclusion ignores the fact that the telecommunications marketplace is made up of a host of different providers offering different services with different cost structures to different customer bases.

As discussed both *supra*, and in Telstar's initial Comments, different services have different profit margins, and while it may be all well and good for a carrier with a 30% margin to "eat" its universal service assessment, a carrier with an average gross margin of 10% simply cannot do the same. Therefore, if the Commission chooses to retain a recovery mechanism based on gross revenues it must subtract not only uncollectibles and credits from a carrier's gross end-user revenues, but also each of the other factors discussed above. If these additional variables are not factored into the equation, so long as the contribution assessment remains based on revenues – either gross end user revenues or gross end user revenues minus uncollectibles—carriers will continue to need to recoup differing amounts from their customers to adequately cover their USF assessments.[11]

Moreover, the Commission cannot and should not tie recovery to the contribution factor because doing so would run afoul of the Act. Specifically, any tying of the USF recovery to the contribution factor would require many carriers to recover some assessment through their basic rates. Any requirement that carriers include universal service assessments in their basic rates runs afoul of Section 254(e) of the Act, by essentially requiring carriers to maintain implicit subsidies. Second, such a method would continue the existing discrimination against carriers with high uncollectibles and/or leaner profit margins by forcing them to bear an unequal risk of non-recovery, thereby violating Section 254(d) of the Act.

On the other hand, assessing contribution on a per-line basis will eliminate customer confusion, since all customers of a particular class will be treated alike. As CECA noted in its report, "[s]ince, under a flat-fee method the carrier would simply be the collection agent, they would avoid controversial add-ons for uncollectibles and administrative costs."[12] Moreover, the effect on the end user would be much less burdensome than the current method, since residential end users could be assessed a mere $1.00 per month on their end user bills, and lifeline customers would not be assessed at all.[13] Finally, the shift to a flat fee will allow consumers to more easily shop around to compare prices. Accordingly a flat-fee assessment will have pro-competitive and pro-

---

[11] At the absolute least, the Commission must base contribution on gross end user revenues minus uncollectibles, and minus payouts to underlying carriers. By including a deduction for payouts to other carriers, the Commission would at least somewhat level the playing field by removing one of the largest variables that causes discrimination against carriers in the most competitive segments of the telecommunications marketplace.

[12] CECA Report, p. 26.

[13] *See* WorldCom Comments, p. 5. A $1.00 per month assessment would likely be less burdensome than the amounts most consumers pay today.

consumer effects and is the simplest, most straightforward and least confusing mechanism for assessing universal service contribution.

### C. A Per-Line Charge Would Be Easy to Administer

As the Commission noted in its *NPRM,* "assessment on a flat-fee basis will eliminate many of the complex calculations that reporting carriers must currently undertake in order to determine the amount that they must recover in addition to contribution assessments."[14] While it is true that USAC will have to implement new billing and collection systems,[15] the transition to a flat-fee based assessment will be well worth the administrative efficiencies on both USAC and reporting carriers. As noted in the CECA report, "Since it is easier to identify lines than revenues, [a per-line assessment] would be an administratively efficient mechanism. [16] By contrast, the current method is nothing short of an administrative nightmare for small carriers like Telstar. The existing method imposes onerous administrative, accounting and financial costs on reporting carriers, making it almost impossible for carriers to ascertain the amounts that they must recover from customers either through rates or via line items on bills in order to recover the assessment.

LEC attempts to paint flat-fee assessments as difficult to administer are simply red herrings. Administration of a per-line assessment is simple and familiar to LECs who already have the existing line count data and billing systems that can be used to assess and collect contributions. [17] Similarly, CMRS providers bill customers by associating

[14] *NPRM*, p. 14, para 26.
[15] USAC Comments, p. 16
[16] CECA Report, p. 26
[17] Ad Hoc Comments, p. 33.

traffic with specific telephone numbers and providing monthly billing, therefore suggesting that it would not be overly complicated for them to collect a monthly USF charge.[18] Accordingly, few if any additional costs would be incurred to implement the requisite billing and data collection systems.

There is no question, that a flat fee scenario would impose significantly fewer burdens on carriers and on USAC. Although USAC raises a concern that new rules would need to be established regarding which companies are subject to the contribution requirement, [19] this problem can be addressed by requiring the carrier who ultimately provides the wireless or wireline connection to the customer (and ultimately has the relationship with the customer) to be responsible for collecting the USF contribution.[20] Requiring the carrier with the ultimate relationship to the end user to be responsible for collection of the contribution would have the additional benefit of eliminating the existing systems complexities borne of special rules, requirements and exemptions for different classes of carriers, such as wireless, international, and *de minimis* providers, and also reduces existing burdens on USAC associated with trying to recover universal service fees from literally thousands of carriers.

### D. A Per-Line Assessment is Consistent with Statutory Requirements

A per-line assessment is consistent with the Act's requirements. LEC objections notwithstanding, a per-line charge is consistent with Section 254(b)'s requirement that "[a]ll providers of telecommunications services should make an equitable and

[18] See Ad Hoc Comments, p. 32, ftnt. 51.
[19] USAC, p. 16.
[20] WorldCom Comments, p. 25

nondiscriminatory contribution...to universal service."[21] Furthermore, a per-line assessment is consistent with the Act's requirements that universal service contribution be equitable, non-discriminatory, and competitively neutral.

USTA's claims that a flat-fee approach would be the equivalent of a *de facto* assessment on intrastate revenues and thus disallowed by the Fifth Circuit is diversionary and without merit.[22] Although USTA asserts that a per line assessment is equal to an assessment on both interstate and intrastate revenues, it is in fact nothing of the sort. Indeed, a flat-fee approach specifically *avoids* the problem of determining jurisdictional revenue boundaries because it abandons a revenue-based assessment altogether in favor of an assessment based on the number of connections to the PSTN. Accordingly, while it is true that the 5th Circuit's decision does not permit contributions to be assessed on intrastate revenues, that Decision is not applicable to a flat-fee scenario, since a flat-fee assessment is unrelated to revenues.

### C. A Flat-Fee Assessment Would Remove The Enormous Policing Requirements On Reporting Carriers Imposed By The Existing Assessment System.

As Telstar discussed in its initial Comments, the existing assessment method imposes administrative costs and unreasonable, unwieldy and untenable policing burdens on reporting carriers because it requires underlying telecommunications providers to police their down-stream customers to determine whether down-stream wholesale customers are *de minimis* carriers, and whether those carriers' revenues need to therefore be included in the reporting carrier's contribution base. A flat-fee reporting method,

---

[21] 47 U.S.C. §254(b)
[22] USTA Comments, p. 5

however, would eliminate these significant burdens on wholesale carriers, since it would be the carrier with the relationship with the end user that would be responsible for collecting the universal service surcharge. In addition, no new policing instruments would need to be developed, because existing line count mechanisms are already in place and used by LECs today.

## CONCLUSION

The existing universal service contribution assessment method, while seemingly simple, is rife with reporting complexities and discriminatory inequities that need to be addressed. A per-line assessment can remedy most, if not all of the problems wrought by the current revenue based system. Accordingly, Telstar respectfully urges the Commission to abandon its existing revenue based assessment mechanism in favor of a flat-fee based assessment method.

Respectfully submitted,

TELSTAR INTERNATIONAL, INC.

*By:* ______________________

Hope Halpern Barbulescu
Director of Regulatory Affairs
Telstar International, Inc.
1 North Broadway
White Plains, NY 10601
914-428-5555 ext. 219
hope@telstar-usa.com

*Its attorney*

Dated: July 6, 2001